

Annapolis, Md., January 31, 1906.

The Board of Public Works of Maryland, met, in the Governor's Office, pursuant to his call, at three p. m., on Wednesday January 31st. There were present: Governor Warfield, Comptroller Atkinson and Treasurer Vandiver.

The attention of the Board having been drawn through the newspapers to the statement submitted by the Directors on behalf of the State in the Baltimore and Ohio Railroad Company to the Senate of Maryland, the following resolution offered by the Governor, and seconded by the Comptroller was unanimously adopted.

"WHEREAS, Senator Arthur P. Gorman and Genl. L. Victor Baughman, Directors on the part of the State of Maryland in the Baltimore and Ohio Railroad Company, have in their communication addressed to the Senate of Maryland, recommended;

"First. That the only possible way by which the State's interest can be ascertained under present conditions is to compel an accounting to be rendered of the receipts and expenditures of the Washington Branch, and a full and accurate inventory of all real estate and other property owned by the Washington Branch in the District of Columbia which can be disposed of.

"Second. To take such action as may be necessary to have the Branch road credited with the appropriation of \$1,500,000 made by Congress when the same becomes payable.

THEREFORE, BE IT RESOLVED, That the Baltimore and Ohio Railroad Company be requested to furnish to the Board of Public Works as soon as possible an accurate statement of the receipts and expenditures of its Washington Branch from October 1st, 1896 (the date from which the payment of dividends to the State ceased) until the close of the last fiscal year of the said Company; together with a full and accurate inventory of all the real estate and other property owned by the Washington Branch in the District of Columbia which can be disposed of without affecting the operation of the road.

RESOLVED, FURTHER, That the said Baltimore and Ohio Railroad Company be requested to state whether it proposes to credit the Washington Branch of the Baltimore Railroad Company with the appropriation of \$1,500,000 made by Congress, when the same becomes payable.

RESOLVED, FURTHER, That the President of the Board is hereby

directed to transmit a copy of these resolutions to Mr. Oscar G. Murray, President of the Baltimore and Ohio Railroad Company, with the request that he will have the information asked for furnished without delay."

The Comptroller offered the following:

WHEREAS, Senator Arthur P. Gorman and General L. Victor Baughman, Directors on the part of the State of Maryland in the Baltimore & Ohio Railroad Company, have in their communication addressed to the Senate of Maryland, suggested that the right of the Washington Branch to participate in the Terminal Company should be judicially determined.

THEREFORE, BE IT RESOLVED, That the Attorney General is hereby instructed to take such steps as he may deem proper to have this right judicially determined.

which, was seconded by the Treasurer and unanimously adopted.

The Governor moved that the communication from the Directors on behalf of the State to the Senate of Maryland be spread in full on the Minutes of this Board with the exception of that part which has already been embodied in the Minutes of this Board, being the communication from the Directors on behalf of the State to the Board of Public Works. Seconded by the Comptroller and carried.

January 29, 1906.

Hon. J. B. Seth,

President of the Senate of Maryland,

Annapolis, Maryland.

Sir:- We have the honor to acknowledge the receipt of a resolution passed by the Senate of Maryland, which is as follows:

January 18, 1906.

On motion of Senator Biddison.

"Ordered by the Senate of Maryland, that the Honorable A. P. Gorman and the Honorable L. Victor Baughman, State Directors in the Washington Branch of the Baltimore & Ohio Railroad, deliver to the Senate of Maryland any and all information that they may have in regard to the State's holdings in the Washington Branch of the Baltimore and Ohio Railroad."

Responding, we have the honor to state,

(1) That the State holds 5500 shares of the stock of the Washington Branch, the par or face value of the same being \$550,000.

(2) In 1897, the Company suspended dividend payments upon said stock, which, prior thereto, had amounted to 10 per cent or \$55,000 per annum to the State. The sole reason assigned by the Baltimore & Ohio Railroad Company for such suspension of dividends (notwithstanding that the same were earned) was the necessity of providing for a new depot and other terminal facilities in the City of Washington.

(3) This action did not meet with the approval of the then Directors selected by the Board of Public Works, as will appear from the records of the B. & O. Company. The General Assembly of Maryland, at its January Session, 1900, also took note of this arbitrary suspension of dividends and a joint resolution (No. 10) was passed, which authorized and directed the Attorney General forthwith to take such proceedings as should be adequate and proper for the fullest assertion and protection of the rights of the State in respect to its ownership in the stock of the Washington Branch of the Baltimore & Ohio Railroad Company, whether by the way of dividends or otherwise.

This was the status of the case when we entered upon the discharge of our duties as Directors.

(4) In pursuance of the resolution of the General Assembly the Attorney General instituted a suit, whereupon the Directors of the B. & O. suggested to the Directors, as well as the members of the then Board of Public Works, that the State sell its interest in the Washington Branch to the B. & O. so as to relieve the somewhat embarrassing situation.

(5) The second section of Chapter 310 of the Acts of the General Assembly of 1892 had in terms prohibited the Board of Public Works from selling the State's interest in said Washington Branch, but, in 1896, the General Assembly passed an Act (Chapter 172) which sought to repeal section 2 of Chapter 310 of the Acts of 1892 so as to authorize the sale of the State's interest. Notwithstanding the doubt entertained as to whether the Act of 1896 (Chapter 172) conferred the power upon the Board of Public Works to sell the stock, the Board of Public Works, consisting of Hon. John Walter Smith, Dr. J. W. Herring and Hon. Murray Vandiver, as well the Directors, deemed it wise to dispose of the State's interest; provided, the Act of 1896 conferred such power, and provided always a proper amount to

could be realized. Therefore, the tentative offers made by the B. & O. officials were considered, and all the data possible to determine the value of the State's holdings were sought.

(6) We held frequent consultations with the members of the Board of Public Works and the then Attorney General, resulting in the unanimous opinion; (

(a) That the tentative offer of \$200 a share was far below the value of the State's stock and

(b) That it would not be possible for the State to receive fair compensation for its interest if advertised and sold to the highest bidder, for the reason that the B. & O. would be the only party having full knowledge of the value of the property.

Therefore it was determined that no further action looking to a sale of the State's interest ought to be taken until further information could be obtained as to the net receipts of the Washington Branch; the value of its property in the City of Washington; and the cost of its share of all proper charges for the construction of a new depot and other terminal facilities in said City.

(7) To this end, at a meeting of the Board of Directors of the Baltimore & Ohio Railroad Company held in December 1903, the state Directors brought the matter to the attention of the Board, and a special Committee, consisting of the then President of the Company, (Mr. Loree) Mr. Steele and A. P. Gorman, Directors, was appointed to consider the payment of a dividend, with the understanding that the Committee would take into consideration the entire question of the possible indebtedness of the Washington Branch, growing out the new terminal facilities in Washington.

That Committee never acted upon the matter, nor were the data necessary for the consideration of the question furnished.

(8) In the meantime, Mr. Oscar G. Murray was elected President of the Baltimore & Ohio Railroad Company; and no action having been taken A. P. Gorman, a member of the special Committee, on April 20th, 1905, addressed a communication to President Murray, pressing the consideration of the question of a dividend and also asked him for a statement, not only of the financial condition of the Washington Branch, but giving full information relative to the new terminal facilities. A copy of that communication is herewith enclosed marked "Exhibit 1".

(9) No action having been taken by President Murray and over

five months having elapsed, on October 2nd, 1905 A. P. Gorman addressed him a communication, insisting upon the furnishing of the information requested in his letter of April the 20th. A copy of said letter is marked "Exhibit 2".

(10) On October 17th, 1905 President Murray furnished a statement, giving the information asked for on April 20th, it being the first one ever received by us from the Company. A copy of that statement is herewith enclosed marked "Exhibit 3". By which statement, we were informed for the first time that the Washington Branch was to be excluded from all interest in the terminal company and depot facilities in the City of Washington; but that it was to be charged with a total estimated expenditure of \$2,275,673.00 for structures and tracks outside the City limits of Washington; and that it would only be permitted to have depot facilities in Washington upon such terms as might hereafter be agreed upon by the owners of the new terminal Company.

(11) President Murray also gave a statement as to the value of the real estate owned by the Washington Branch in the City of Washington, estimating its probable value, when it could be disposed of hereafter, at \$870,936.00; but omitting from that statement any reference to the appropriation of \$1,500,000 made by Congress, which was largely in consideration of property surrendered to the Government by the Washington Branch.

(12) Whereupon, A. P. Gorman presented to the Board of Directors of the Baltimore & Ohio Railroad Company, at a meeting held on October 30th, 1905, a protest, insisting that the dividend should be at once declared, and protesting against the amounts to be charged to the Washington Branch and its exclusion from any participation in the most valuable ~~Branch~~ grant ever made by the Congress of the United States for depot facilities in the City of Washington. A copy of that protest is enclosed marked "Exhibit 4."

(13) The Board of Directors of the B. & O. referred the protest to its finance Committee, and, so far as we are advised, no action whatever has been taken by the Company.

(14) After the protest above referred to and the failure of the B. & O. Directors to take action thereon, we, on December 1905 presented to the Board of Public Works the following ~~statement~~ statement:

(For same see pages 193-198 of the Minutes of the Board of Public Works.)

(15) Since the presentation of that statement, we have continued our investigations as to the surplus revenue, the value of the property in Washington that can be sold, and the estimated cost of new improvements in the District of Columbia, which, in our judgment can be properly charged to the Washington Branch. In respect thereto we submit the following:

The statement of the B. & O. shows that the surplus revenue of the Washington Branch, from the suspension of the payment of dividends, May, 1897, to January 1, 1905, was ----- \$2,520,480.54

We estimate the surplus revenue of the Branch from January 1, 1905, to January 1, 1906, will exceed ----- 350,000.00

To which may properly be added the estimated interest due from the B. & O. on moneys of the Washington Branch held and used by said B. & O. Co. from 1897 to 1906, amounting to about ----- 200,000.00

To this must be added the amount appropriated by Congress (principally to compensate for the surrender of the rights and property of the Washington Branch.) ----- 1,500,000.00

The value of the old depot and other real estate in Washington is estimated by President Murray at ----- 870,936.55

Making the total assets of the Branch on these accounts ----- 5,441,417.09

Assuming for the purpose of this statement only; that the Acts of Congress providing for the Terminal Company, and is, therefore, excluded from any participation therein:

Then the only proper charge that, in our judgment, can be made against the Branch is for the cost of a new line of tracks from Langdon to Florida avenue (the boundary street of Washington where connection is to

be made with the Terminal Company's tracks)
 and for the cost of coal yards and freight
 sheds, which, allowing for contingencies,
 ought not to exceed ----- 800,000.00

Which, if deducted from the total estimated
 cash assets, the estimated value of the
 real estate to be sold, and the amount appro-
 priated by the Congress of the United States
 payable when the new depot is completed,
 would leave a balance in favor of the Washing-
 ton Branch of -----4,641,417.09

This amount, divided among the stockholders
 would be equivalent, for each share, to
 about ----- 280.00

Or a total to the State for its 5500 shares
 of over ----- 1,500,000.00

(16) To show that we have a right to include in the assets
 of the Washington Branch the appropriation by Congress of \$1,500,
 000.00, we quote from a statement of L. F. Loree, President of the
 Baltimore and Ohio Railroad, made by him to Congress on January 1,
 1903, when an attempt was made to reduce the amount from \$1,500,
 000.00 to \$1,000,000.00.

President Loree, in entering his protest against the attempt-
 ed reduction, said:

"that when the B. & O. accepted the Act of Congress of
 "February 12, 1901, and particularly the provision pro-
 "viding for the payment to this company of \$1,500,000.00,
 "it was considered only a reasonable consideration for the
 "surrender by the Company of valuable rights secured to
 "it by former acts of Congress, the abolition of grade
 "crossings, and grants to the Government of valuable lands
 "included in the old roadway of the Washington Branch, and
 "of the expenditures to be incurred in connection with the
 "construction authorized."

From this statement of President Loree, it appears and is true
 that the appropriation of \$1,500,000.00 was made because of the
 surrender of the rights and property of the Washington Branch, the
 Metropolitan Branch of the B. & O. having an infinitesimal interest

in the city.

(17) In view of the foregoing and other facts which have come to our knowledge, we are of opinion:

First. That the only possible way by which the State's interest can be ascertained, under present conditions, is to compel an accounting to be rendered of the receipts and expenditures of the Washington Branch, and a full and accurate inventory of all the real estate and other property owned by the Washington Branch in the District of Columbia which can be disposed of.

Second. To take such action as may be necessary to have the Branch road credited with the appropriation of \$1,500,000.00 made by Congress when the same becomes payable.

Third. To have the right of the Washington Branch to participate in the terminal company judicially determined.

(18) If it should be determined that the Washington Branch has no right to participate in the ownership of the terminal company, it will be denied a very valuable interest, and that, too, by methods which may modestly be termed as extraordinary as ever resorted to by the majority holder. Yet, if such should be the case, we are of opinion that the net earnings of the branch road in the future will not be seriously impaired, if at all, as the Act of Congress providing for the new terminal secures to it the right to use the new depot facilities and the connecting link to all the Southern roads entering Washington, upon such terms, not as may be granted by the terminal Company, but upon such terms as the courts of the District of Columbia may determine as reasonable and fair.

Under these conditions, the future earning capacity of the road, if properly managed, should increase rather than diminish, and 10 per cent. dividends per annum should continue to be realized.

(19) Under the broad terms of the resolution, we take the liberty to add that, as desirable as it may be for the State to terminate its partnership in this corporation, yet we respectfully suggest that until the questions which have arisen are disposed of and property adjusted the value of the State's interest cannot be determined.

Respectfully submitted.

A. P. Gorman,
L. Victor Baughman.

Directors, B. & O. R. R. Co.

The Board, at 3.30, p. m., adjourned.